

JS-6

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

BTL INDUSTRIES, INC.

Plaintiff,

V.

MUNERA ESTHETICS, INC.

Defendant.

Case: 2:23-cv-00269 AB(RAOx)

*Hon. Judge Andre Birotte, Jr.
Mag. Judge Rozella A. Oliver*

CONSENT JUDGMENT AND PERMANENT INJUNCTION

18 This Court, having considered the request of Plaintiff BTL Industries, Inc.
19 (“BTL”) and Defendant Munera Esthetics, Inc. (“Munera”) (collectively, the
20 “Parties”) to enter the following relief, and such relief appearing reasonable under
21 the circumstances.

22 || The Court finds as follows:

24 1. On January 13, 2023 BTL filed Case No. 2:23-cv-00269-AB-RAO in
25 the United States District Court for the Central District of California;

26 2. BTL brought this action seeking injunctive relief and monetary
27 damages against Munera for allegations of trademark infringement, unfair
28 competition, false designation of origin, and false advertising under the Lanham Act

1 (15 U.S.C. §§ 1114, 1125(a)); unlawful, unfair, and/or fraudulent business practices
 2 under the California Business and Professions Code (Cal. Bus. & Prof. Code. §§
 3 17200, et seq.); and common law unfair competition;

4 3. On April 6, 2023, Munera filed an Amended Answer, denying the
 5 allegations.

6 4. The Parties have agreed to terms and conditions representing a
 7 negotiated resolution of the above-captioned matter. Munera now stipulates and
 8 consents to this Consent Judgment and Permanent Injunction, to its prompt entry by
 9 the Court, and to each and every provision, order, and decree herein;

10 5. This Court has jurisdiction over the subject matter of this case and
 11 jurisdiction over Defendant;

12 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b);

13 7. BTL uses, owns, and exclusively licenses registered and unregistered
 14 trademarks and trade dress for its brand of aesthetic equipment and treatments,
 15 including the following valid and subsisting federally registered trademarks
 16 (collectively, the “BTL Trademarks”):

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
5,572,801	EMSCULPT	Oct. 2, 2018	Sept. 29, 2017	Class 10: Medical apparatus and instruments for the treatment of cellulite; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, circumference reduction, tightening of skin, reduction of wrinkles, reduction of scars, reduction of stretch marks, rejuvenation

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
				of skin, and treatment of pigmentation spots; above medical apparatuses with exception for the treatment of the nasopharynxes including inhalers and nasal irrigators; massage apparatus; medical apparatus and instruments for aesthetic skin treatment procedures; medical apparatus generating electromagnetic, magnetic, electrical, mechanical or thermal energy for use in skin treatment procedures; medical apparatus particularly apparatus for pain management, elimination of muscle spasms; gynaecological and urological apparatus and instruments, namely, for genital rejuvenation, treatment sexual dysfunction, gynecological treatment and pelvic floor treatment
5,915,636	EM	Nov. 19, 2019	Jan. 8, 2019	Class 10: Physical therapy devices for treating muscle spasms and pain management; medical apparatus and instruments, in particular apparatus and instruments for the treatment of cellulite, apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
				fat, circumference reduction; medical devices for use in treating gynecological disorders, pelvic area disorders, bladder disorders and incontinence. Class 44: Health assessment services; medical services, namely, providing treatment for patients with gynecological disorders, pelvic area disorders, bladder disorders and incontinence; gynecological services; urology medical care services; rental of medical apparatus and equipment; cosmetic and plastic surgery; beauty salon services; liposuction and surgical body shaping services; medical services, namely, removal of body cellulite; physical therapy services.
6,069,279	EMSCULPT	Jun. 2, 2020	Sept. 29, 2017	Class 44: medical services; gynecology services; medical equipment rental; cosmetic and plastic surgery; beauty salons; liposuction services; removal of body cellulite
6,206,098		Nov. 24, 2020	Jul. 30, 2018	Class 10: Physical therapy devices for treating muscle spasms and pain management; medical apparatus and instruments, in particular

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
				<p>apparatus and instruments for the treatment of cellulite, apparatus and instruments for body toning and body shaping, and apparatus and instruments for the removal of fat, circumference reduction; medical devices for use in treating gynecological disorders, pelvic area disorders, bladder disorders and incontinence.</p> <p>Class 44: Health assessment services; medical services, namely, providing treatment for patients with gynecological disorders, pelvic area disorders, bladder disorders and incontinence; gynecological services; urology medical care services; rental of medical apparatus and equipment; cosmetic and plastic surgery; beauty salon services; liposuction and surgical body shaping services; medical services, namely, removal of body cellulite; physical therapy services.</p>
5,688,619	HIFEM	Mar. 5, 2019	Sept. 19, 2017	Class 10: Medical and aesthetic apparatus and instruments generating electromagnetic, magnetic,

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
				electrical, mechanical, radiofrequency or thermal energy for use in skin treatment procedures; medical apparatus and instruments for body toning and body shaping; medical apparatus and instruments for the removal of fat, circumference reduction, tightening of skin, reduction of wrinkles, reduction of scars, reduction of stretch marks, rejuvenation of skin, treatment of pigmentation spots, increase in muscle volume, increase in number of muscle fibres and increase in muscle tonus; medical apparatus and instruments for the treatment of cellulite; therapeutic facial masks; facial toning machines for cosmetic use; electric stimulation and magnetic stimulation apparatus for physical therapy purposes

Reg. No.	Mark	Reg. Date	First Use in Commerce or Priority Date	Goods / Services
				<p>for the treatment of nerve and muscle pain and elimination of muscular spasms; gynecological and urological apparatus and instruments, namely for genital rejuvenation, treatment sexual dysfunction, gynecological treatment and pelvic floor treatment.</p> <p>Class 44: Medical services; medical equipment rental; cosmetic and plastic surgery; beauty salons; liposuction services; medical removal of body cellulite.</p>

8. The BTL Trademarks have been used exclusively and continuously by BTL and have never been abandoned. The above U.S. registrations for BTL's Trademarks are valid and subsisting in full force and effect.

9. The registrations for the BTL Trademarks constitute *prima facie* evidence of their validity and of BTL's exclusive right to use the trademarks pursuant to 15 U.S.C. § 1057(b).

10. BTL exclusively licenses patents claiming proprietary magnetic stimulation technology and methods of treatment, which are embodied in BTL's

1 aesthetic equipment and treatment protocols, including the following valid and
2 enforceable patents (collectively, the “**BTL Patents**”):

- U.S. Patent No. 10,478,634, entitled “Aesthetic Method of Biological Structure Treatment by Magnetic Field,” which was duly and legally issued by the U.S. Patent and Trademark Office on November 19, 2019; and
 - U.S. Patent No. 10,695,575, entitled “Aesthetic Method of Biological Structure Treatment by magnetic Field,” which was duly and legally issued by the U.S. Patent and Trademark Office on June 30, 2020; and
 - U.S. Patent No. 11,266,852, entitled “Aesthetic Method of Biological Structure Treatment by Magnetic Field,” which was duly and legally issued by the U.S. Patent and Trademark Office on March 8, 2022; and
 - U.S. Patent No. 9,636,519, entitled “Magnetic Stimulation Methods and Devices for Therapeutic Treatments,” which was duly and legally issued by the U.S. Patent and Trademark Office on May 2, 2017; and
 - U.S. Patent No. 10,596,386, entitled “Aesthetic Method of Biological Structure Treatment by Magnetic Field,” which was duly and legally issued by the U.S. Patent and Trademark Office on March 4, 2020.

19 11. BTL has not licensed or authorized Munera to use any of the BTL
20 Trademarks or BTL Patents.

12. Munera imported, offered for sale, and sold body-contouring aesthetic
13 devices, including but not limited to the SCULPTME™, SCULPTME GOLD™,,
14 and MUSCLE MAX™, devices that infringed on BTL's Patents, and were sold in
15 connection with the BTL Trademarks, and marks confusingly similar thereto;

25 13. BTL has not licensed or authorized Munera to sell devices that infringe
26 the BTL Patents or use any of the BTL Trademarks or confusingly similar versions
27 thereof;

1 14. This Consent Judgment and Permanent Injunction constitutes a final
2 judgment on the merits of BTL's claims for purposes of res judicata, collateral
3 estoppel, issue preclusion, and claim preclusion.

4 Therefore, JUDGMENT IS HEREBY ENTERED, upon consent of the Parties
5 hereto, in favor of BTL Industries, Inc. as follows:

6
7 1. Pursuant to Fed. R. Civ. P. 65, IT IS HEREBY ORDERED:

8 (a) Munera, including any current officers, agents, employees, independent
9 contractors, representatives, successors in interest, and all other persons, firms, or
10 companies in active concert or participation with Munera is permanently enjoined
11 and restrained from directly or indirectly:

12 (i) using the BTL Trademarks or any reproductions, copies,
13 colorable imitations, and confusingly similar versions thereof, including but not
14 limited to SCULPTME™ and SCULPTME GOLD™, in any manner in connection
15 with the promotion, marketing, advertising, offering for sale, or sale of any device
16 that is not a genuine BTL device, or any service that is not a BTL service offered by
17 a genuine new BTL device, or a pre-owned BTL-recertified device;

18 (ii) committing any acts calculated to cause consumers to believe
19 that Munera's devices are sold under the authorization, control or supervision of
20 BTL, or are sponsored by, approved by, or otherwise connected with BTL;

21 (b) Munera, including any current officers, agents, employees, independent
22 contractors, representatives, successors in interest, and all other persons, firms, or
23 companies in active concert or participation with Munera, is permanently enjoined
24 and restrained from directly or indirectly:

25 i. Making, importing, using, offering to sell, or selling—without
26 BTL's authorization—the SCULPT ME™ device, the SCULPT ME
27 GOLD™ device, the MUSCLE MAX™ device, or any similar magnetic body
28 sculpting device;

1 ii. Making, using, offering to sell, or selling—without BTL’s
2 authorization—any service implementing or utilizing a SCULPT ME™
3 device, the SCULPT ME GOLD™ device, the MUSCLE MAX™ device, or
4 any similar magnetic body sculpting device;

5 iii. Encouraging, promoting, recommending, or instructing—without
6 BTL’s authorization—any third party to make, use, offer to sell, or sell any
7 SCULPT ME™ device, the SCULPT ME GOLD™ device, the MUSCLE
8 MAX™ device, or any magnetic body sculpting device;

9 2. IT IS FURTHER HEREBY ORDERED that Munera shall pay BTL the
10 total damages agreed upon by the Parties, which amount is subject to a
11 confidentiality clause.

12 3. IT IS FURTHER HEREBY ORDERED that this Consent Judgment
13 and Permanent Injunction shall be binding upon and shall inure to the benefit of the
14 Parties and their respective successors, assigns, and acquiring companies.

15 4. IT IS FURTHER HEREBY ORDERED that the Court retains
16 jurisdiction of this matter for the purposes of enforcing the terms of this Consent
17 Judgment and Permanent Injunction.

18 5. IT IS FURTHER HEREBY ORDERED that the permanent injunction
19 shall remain in full force and effect unless and until modified by order of this court.

20 6. IT IS FURTHER HEREBY ORDERED that all claims and demands in
21 the above-captioned matter are hereby dismissed without prejudice and without
22 costs, disbursements or attorneys’ fees to any party. This is a final order and
23 judgment.

24 IT IS SO ORDERED this 16th day of May, 2023.
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26 HON. ANDRE BIROTTÉ JR.
27 UNITED STATES DISTRICT JUDGE
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